



**The Comptroller General
of the United States**

Washington, D.C. 20548

Ruppert

Decision

Matter of: Armament Engineering Co.

File: B-230204

Date: May 27, 1988

DIGEST

Where protester's best and final offer was technically unacceptable and three other proposals were acceptable, protester is not an interested party to protest award of a contract for engineering services; if protest were sustained, another offeror, not the protester, would be in line for award.

DECISION

Armament Engineering Company (AEC) protests the award of a contract to Point Industries Corporation under request for proposals (RFP) No. DAAA21-87-R-0174, issued by the Department of the Army. The solicitation, a 100-percent small business set-aside, requested proposals to supply on a labor-hour basis engineering services for use in the research, development and production of Army weapons systems. AEC challenges both the awardee's ability to perform at its proposed price and the Army's determination that AEC's best and final offer (BAFO) was technically unacceptable.

We dismiss the protest.

The solicitation provided that evaluation would be based on technical (engineering approach), management (engineering personnel, past performance, organization and facilities), and price considerations, with award to be made to the responsible offeror submitting the lowest-priced, technically acceptable proposal. Only one of the firms responding to the RFP submitted a proposal that was considered technically acceptable in all areas. The other six firms (including AEC) were advised of deficiencies in their proposals and all offerors were requested to submit BAFOs. Four proposals ultimately were found to be technically acceptable, and award was made to Point Industries on the basis of its low price of \$81,099.30. AEC's BAFO was viewed as unacceptable. AEC thereupon filed this protest.

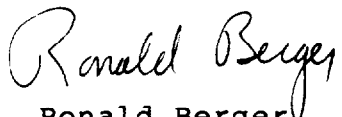
The Army contends that AEC is not an interested party to protest the award to Point Industries because AEC's BAFO was technically unacceptable and thus not in line for the award. In this regard, both the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 and 3552 (Supp. III 1985), and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1988), provide that a party must be "interested" in order to have its protest considered by our Office; an interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of or failure to award a contract. Generally, a party will not be deemed to have the necessary economic interest where it would not be in line for award if its protest were sustained. See Atrium Building Partnership, B-228958, Nov. 17, 1987, 67 Comp. Gen. _____, 87-2 CPD ¶ 491.

The solicitation have required offerors to propose 6030 hours of "general engineer" labor. AEC proposed alternate price approaches in its initial offer, offering to supply the 6030 engineer hours called for by the solicitation at a total price of \$243,200, or, in the alternative, 6030 technician hours for a total price of \$182,900. In its BAFO, however, AEC only proposed a mix of engineer and technician hours; it offered to provide 500 engineer hours and 5530 hours of labor by an unspecified mix of general engineers and technicians ("General Engineer/Technician") for a total price of \$110,110. (Point Industries, on the other hand, offered to perform all 6030 hours with engineers possessing engineering degrees.) The contracting officer concluded that AEC's proposal in its BAFO to perform a significant part of the engineer requirement with technicians rendered the proposal technically unacceptable.

We agree with the Army that AEC, in taking exception to the mandatory solicitation requirement for engineers and offering instead to provide a mix of engineers and technicians, rendered its BAFO unacceptable. The basic purpose of this procurement is to acquire a specific type of advanced professional services; accordingly, the requirement for engineers is considered a material requirement going to the heart of the solicitation. Although we note that the agency did not specifically advise AEC during negotiations that proposing technicians was unacceptable, the requirement for engineers was expressly stated in the solicitation and AEC's proposal evidences an awareness of the requirement. Moreover, AEC's proposal did not become unacceptable on this basis until the submission of the BAFO; as indicated above, in its initial proposal AEC offered (as one of two alternate approaches) to meet the requirement for engineers. The Army had no obligation to reopen negotiations and request another round of BAFOs so as to lead AEC to technical acceptability.

See generally Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 CPD ¶ 192. In any case, given that the awardee's BAFO price based on employing only engineers already was lower than AEC's price based on employing some technicians, it does not appear that reopening negotiations to reiterate the engineer requirement would have changed the outcome here.

In view of the technical unacceptability of AEC's proposal and the fact that three other proposals (besides that of Point Industries) were found technically acceptable, AEC would not be in line for award if its protest against award to Point Industries were sustained. AEC therefore is not an interested party, and its protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel